**HC Writ Disability Pension**

IN THE HON'BLE HIGH COURT OF TN AT CHENNAI

CWP No.:\_\_\_\_\_\_ of 2004

Petitioner

Versus

Respondents

List Of Events

Dates:\_\_\_\_\_\_

Events :\_\_\_\_\_\_

Chennai Petitioner

:\_\_\_\_\_\_ Through, Advocate

**IN THE HON'BLE HIGH COURT OF TN AT CHENNAI**

CWP No.::\_\_\_\_\_\_ of 2004

Petitioner

Versus

Respondents

Civil Writ Petition Under Article 226/227 Of The Constitution Of India For Appropriate Writ, Order Or Directions To The Respondents

Chennai

Petitioner
\_\_\_\_\_\_

Through, Advocate

Respectfully Sheweth;

1. That your Lordship's humble petitioner is a citizen of India and on the grounds hereinafter mentioned is entitled to file and maintain the present writ petition before this Hon'ble Court.

2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3. That the petitioner was enrolled in the Indian Army on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The petitioner was allotted Army No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The petitioner was initially engaged for \_\_\_\_\_\_\_ years of service and with the passage of time the petitioner would have earned promotion upto the rank of Subedar Major and Honorary ranks and he would have thus served upto 32 years of service in the Army.

4. That the petitioner was undergoing very hard and strenuous basic training successfully and to the entire satisfaction of his superiors and the instructors. The petitioner had all the traits and capabilities of becoming a good soldier and serving the nation. The petitioner had very successfully completed \_\_\_\_\_ months basic training.

5. That the medical authorities after carrying out investigations diagnosed the disease of the petitioner as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and placed the petitioner in the lower medical category \_\_\_\_\_\_ on \_\_\_\_\_\_ vide Annexure P-\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and as a result of which the petitioner was invalided out of the Military Service, without offering him an opportunity either to give his willingness or unwillingness for retention in the Army against the sheltered or alternative appointment and show cause against his invalidment out of the service in accordance with the rules and regulations governing the subject matter.

6. That thereafter the petitioner was invalided out of service w.e.f. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ barely after \_\_\_\_\_ months \_\_\_\_\_ days of service without paying any invalidment benefits, ie; invalid/disability pension to the petitioner, which is admissible to him under the rules and regulations. The petitioner was intimated to his utmost surprise and dismay by the respondent vide Annexure P-\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ that he is not entitled to the Disability Pension. The petitioner has thereafter preferred an appeal against the said rejection vide Annexure P-\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ which has been acknowledged as having been received by the respondents vide Annexure P-\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. But, unfortunately, the respondents do not seem to be paying any heed towards the representation of the petitioner even after more than \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ months have elapsed.

7. That the medical authority vide Annexure P-\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has advised the petitioner to take medicines up to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ years of service, meaning thereby that the petitioner was fit to be retained in the service and his disease was curable within the period of three years.

8. That the petitioner not feeling satisfied with the findings and recommendations of the military medical authorities got himself checked up at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The medical authorities has opined that the petitioner has \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, meaning thereby that the petitioner has been cured of the disease and is thus fit to be taken back and retained in the Army. The report of the Medical Authorities of is Annexed as Annexure P-\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**GROUNDS**

9. That Your Lordship's humble petitioner is invoking the extra-ordinary jurisdiction of this Hon'ble court and seeking indulgence on the following grounds amongst others, each one of which is without prejudice to and independent of other :-

(a) That the impugned action of the respondents whereby \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is arbitrary, malafide, illegal, unjust, against the Art 14, 16 and 19 of the Constitution of India as well as against the natural justice and dehors the rules and regulations.

(b) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_That it would not be out of place to mention here that the petitioner had no similar type of episode either before or thereafter or during the course of admission in the military hospital for investigations for about 66 days.

(c) That the petitioner was found fit to join the Army at the time of his enrollment by the military medical authorities. Now it does not lie in their mouth to say to the contrary. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Moreover there is no history of the disease in the family or relation of the petitioner.

(d) That otherwise also the percentage of disability as assessed by the military medical authorities is of moderate degree, meaning thereby that the petitioner should have either been placed in category BEE or at the most in category CEE in accordance with the Army Order No. 146 of 1977 and retained him by giving him the Sheltered Appointment or the alternative appointment as provided for under the provisions of Army Order No. 46 of 1980 which provides that the efforts should be made to provide alternative employment in their own trade/category commensurate with their medical categorisation. And the Order further provides that ordinarily, permanent low medical category personnel will be retained in service till completion of 15 years service in the case of JCOs and 10 years in the case of OR [including NCOs]. The respondents have taken no efforts to provide the alternative sheltered appointment to the petitioner. This provision has been made with the intention so that the soldier can earn a normal service pension after 10 years of service. Here it would not be out of place to mention that the Hon'ble Supreme Court has ordered sheltered appointment even to the blind persons in the case Anand Vs Tamil Nadu State Transport Corpn reported in AIR 1991 SC 1003 and in another case titled as Kishan Lal Vs Union of India reported in 1988 [3] SLJ [CAT] 272 the sheltered appointment was ordered to the blind persons.

(e) That as per para 143 of Regulations for the Army 1987, an ex-serviceman who has been medically boarded out without any disability pension or those whose disability pensions have been re-assessed below 20% by the Re-survey Boards, will be eligible for re-enrollment. Since the medical authorities were well aware that the disability of the petitioner is below 20% and the petitioner will not be paid any disability/service pension consequent to invaliding out of service, there was no reason for invaliding out the petitioner. Notwithstanding, the respondents deserves to be issued directions for re-enrollment of the petitioner w.e.f \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ie; the date of invaliding out with all the consequential benefits and rectify their wrong actions.

(f) That the medical authorities have based their view on imagination, conjectures and surmises rather than on sound and substantial medical grounds and findings. The placing of the petitioner in medical category \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ EEE was based on the extraneous considerations, ie, the petitioner was a recruit, even though the petitioner had completed substantial period of training. Had the petitioner not been a recruit the recommendations of the medical authority would have been quite different and favourable. The respondents can not draw distinction for granting alternative sheltered appointments on the basis of ranks, which otherwise will be violative of Articles 14 and 16 of the Constitution of India.

(g) That the respondents have acted in a mechanical manner and have not cared to apply their mind to the facts and circumstances of the case. The petitioner has been reduced to non-entity by the action of the respondents and the petitioner has been rendered a pauper by depriving him of his livelihood just because of arbitrary, discriminatory and unmindful action of the respondents at the prime of his age. The petitioner has been denied his rights of life, liberty and livelihood.
(h) That assuming but not admitting or conceding that the petitioner has correctly been invalided out of service, then the petitioner is entitled for the invalid/disability pension along with the service pension as the disease of the petitioner is attributable to military service and aggravated by the military service. The disease of the petitioner has a direct causal connection with the service conditions as the disease has been precipitated by the hard and strenuous training of the military and the same is directly responsible for on-set of the disease.

(i) That the Entitlement Rules for Casualty Pensioner Awards, 1982 provides for the invalid/disability pension. The Rule 4 of the Rules of 1982 lays down that invaliding from service is a necessary condition for grant of a disability pension. An individual who, at the time of his release under the Release Regulations, is in a lower Medical category than that in which he was recruited will be treated as invalided from service. JCOs/ORs and equivalent in other services who are placed permanently in a medical category other than 'AYE' and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalidated out of service.

(j) That the rule 5 of the Rules of 1982 further provides that the approach to the question of entitlement to casualty pensioner awards and evaluation of disabilities shall be based on the presumptions that a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service. Here it would not be out of place to mention that the petitioner was thoroughly medically checked up by the respondents before enrolling him into the Army.

(k) That the Rule 9 of the Rules of 1982 provides that the onus to prove the conditions of entitlement shall not lie upon the claimant. The claimant shall receive the benefit of any reasonable doubt. The Rule 14 amplifies and clarifies that the cases in which it is established that the conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent courses of the disease, will fall for acceptance on the basis of aggravation, ie; the disease in the case of the petitioner has been aggravated by the service conditions. The rule further clarifies that a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. Here it would be pertinent to mention that the petitioner was thoroughly medically checked up by the respondents before enrolling him into the Army. Now it does not lie in their mouth to say to the contrary.

(l) That the law with regard to causal connection of disease with the service has been laid down by this Hon'ble Court in the case ----------------- Vs Union of India reported in 1995 [2] Sim LC 118. It is also settled law that the disease on the basis of which a sepoy was discharged is normally deemed to be attributable to Army Service if no note of it was made at the time of enrollment in Army vide 1992 (3) SLR (P & H) 662. This position of law has further been confirmed in the following judgments, ie; -------------------------- Vs UOI reported in 1992 [3] SLR (P&H) 758, ------------------------ Vs UOI reported in 1992 (6) SLR (P&H) 749, ----------------- Vs UOI reported in 1991 (5) SLR (P&H) 476, Ex ------------------------ Vs UOI reported in 1991 (5) SLR (P&H) 459, ----------------- Vs UOI reported in 1991 (6) SLR (P&H) 468, ----------- Vs UOI 1991 (5) SLR (P&H) 190 etc.

(m) That it is settled law by the Hon'ble Supreme Court and this Hon'ble Court that the pension is a property of a government servant and is of a recurring nature and denial of pension is a recurring injury. The action of the respondent is thus violative of the provision of the Art 300-A of the Constitution of India inasmuch as the petitioner has been deprived of right without due process of law and in grave violation of the principles of natural justice.

(n) That the whole action of the respondents have been taken in hot haste simply with a view to deprive the petitioner of his legitimate rights just because he was a recruit.

3. That the petitioner has no other speedy and efficacious remedy available except to approach this Hon'ble court by way of the present writ petition.

4. That the petitioner has not filed any other writ petition on same or similar grounds either before this Hon'ble court or before the Supreme Court of India.

5. That the petitioner, therefore, prays that an appropriate writ, order or directions be issued for the following reliefs :-

(a) Quash the impugned orders P \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

(b) Direct the respondents to re-enroll the petitioner in the Army w.e.f \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ie, the date of invaliding out with the full salary and other consequential benefits as the petitioner has been invalided out arbitrarily, discriminately and in utter violation of the constitutional rights and natural justice and for no fault of his; OR;

(c) Direct the respondents to grant to the petitioner Disability Pension as well as the Service Pension as admissible under the law/rules, as the petitioner has contacted the disease which has become cause for his invalidment, during the course of training and service and is attributable to and aggravated by the service conditions, with interest @ 18% p.a. and other consequential benefits;

(d) Direct the respondents to produce all the relevant records, more particularly the medical records, for perusal by this Hon'ble court;

(e) Allow the cost of this writ petition to the petitioner, and;

(f) Allow such other relief or pass such other orders as deemed fit and proper in the facts and circumstances of the case in favour of the petitioner and justice be done.

AND FOR THIS ACT OF KINDNESS, THE HUMBLE PETITIONER AS IN DUTY BOUND, SHALL EVER PRAY.

Chennai

Petitioner

\_\_\_\_\_\_

Through, Advocate

**THE HON'BLE HIGH COURT OF TN AT CHENNAI**

CWP No.:\_\_\_\_\_\_ of 2004

Petitioner

Versus

Respondents

Affidavit in support of the Civil Writ Petition under Articles 226/227 of the Constitution of India.

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, do hereby solemnly affirm and declare as under :

1. That the accompanying writ petition has been prepared under my instructions.

2. That the contents of paras 1 to \_\_\_\_\_\_\_\_\_ of the accompanying writ petition are correct and true to the best of my knowledge.

3. That I further solemnly affirm and declare that this affidavit of mine is correct and no part of it is false and nothing material has been concealed therein.

Affirmed at Chennai this the \_\_\_\_\_\_.

Deponent

**IN THE HON'BLE HIGH COURT OF TN AT CHENNAI**

CMP No.:\_\_\_\_\_\_ of 2004 in CWP No.: \_\_\_\_\_\_ of 2004

Petitioner/Applicants

Versus

Respondents/Non-Applicants

Application Under Rule 2 of the Writ Rules for dispensing with Seven days notice of motion

Respectfully Sheweth:

1. That the petitioner/applicant has filed the above mentioned writ petition in this Hon'ble court.

2. That on perusal of the allegations made in the writ petition and the documents attached therewith it is evident that the matter is of urgent nature and dispensing with of seven days notice is essential in the interest of justice.

3. It is, therefore, prayed that this application may be allowed and seven days notice of motion dispensed with and writ petition be listed immediately.

Chennai

Petitioner/Applicant

\_\_\_\_\_\_

Through, Advocate

**IN THE HON'BLE HIGH COURT OF TN AT CHENNAI**

CMP No.:\_\_\_\_\_\_ of 2004 in CWP No.:\_\_\_\_\_\_ of 2004

Petitioner/Applicant

Versus

Respondents/Non-Applicants

Affidavit in support of the application under Rule 2 of the Writ Rules.

I, \_\_\_\_\_\_, do hereby solemnly affirm and declare as under :-

1. That the accompanying application has been prepared under my instructions.

2. That the contents of paras 1 to 3 of the accompanying application are correct and true to the best of my knowledge.

3. That I further solemnly affirm and declare that this affidavit of mine is correct and no part of it is false and nothing material has been concealed therein.

Affirmed at Chennai this the \_\_\_\_\_\_.

Deponent

**IN THE HON'BLE HIGH COURT OF TN AT CHENNAI**

CMP No.:\_\_\_\_\_\_ of 2004 in CWP No.:\_\_\_\_\_\_ of 2004

Petitioner/Applicant

Versus

Respondents/Non-Applicants

Application Under Rule 4 of the Writ Rules for Ad interim orders

Respectfully Sheweth:

1. That the petitioner/applicant has filed the above mentioned writ petition in this Hon'ble court.

2. That on perusal of the allegations made in the writ petition and the documents attached therewith it is evident that the petitioner/applicants have prima facie a very good case in their favour and the writ petition is likely to succeed. The Balance of Convenience is in favour of the petitioners/applicants.

3. That the interest of justice demands that during the pendency of the writ petition \_\_

4. It is, therefore, prayed that this application may be allowed and \_\_ in the interest of justice. Such other orders may also be passed in favour of the petitioners as deemed fit and proper by this Hon'ble court in the facts and circumstances of the case.

Chennai

Petitioner/Applicant

\_\_\_\_\_\_

Through, Advocate

**IN THE HON'BLE HIGH COURT OF TN AT CHENNAI**

CMP No.:\_\_\_\_\_ of 2004 in CWP No.:\_\_\_\_\_\_ of 2004

Petitioner/Applicant

Versus

Respondents/Non-Applicants

Affidavit in support of the application Under Rule 4 of the Writ Rules.

I, \_\_\_\_\_\_, do hereby solemnly affirm and declare as under :-

1. That the accompanying application has been prepared under my instructions.

2. That the contents of paras 1 to 4 of the accompanying application are correct and true to the best of my knowledge.

3. That I further solemnly affirm and declare that this affidavit of mine is correct and no part of it is false and nothing material has been concealed therein.

Affirmed at Chennai this the \_\_\_\_\_\_.

Deponent

**Under Order 7 Rule 13 (1) CPC**

List of Documents Filed By Petitioner

In The Court of: Hon'ble High Court of TN at Chennai

Versus

Date of Hearing: \_\_\_\_\_\_ Suit For : CWP

Date of Production : \_\_\_\_\_\_

Date: \_\_\_\_\_\_

Counsel for Plaintiff/Defendant

In the High Court of TN at Chennai

Mention Memo

1. Number & Nature of case: \_\_\_\_\_\_ \_\_\_\_\_\_ Vs \_\_\_\_\_\_

2. Party seeking posting: Petitioner/Appellant

3. Name of Advocate of : \_\_\_\_\_\_, Advocate party seeking posting.

4. Name of Advocate : \_\_\_\_\_\_ appearing for the opposite party

5. Mention for: Motion/Admission/Orders.

6. Reason for the mention:\_\_\_\_\_\_

7. Date on which posting is sought:\_\_\_\_\_\_

Chennai

\_\_\_\_\_\_

Advocate